

<sup>2</sup> The Board notes that, following the October 1, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### **ISSUE**

The issue is whether OWCP abused its discretion by denying appellant's request for authorization of total right knee replacement surgery.

### **FACTUAL HISTORY**

This case has previously been before the Board on a different issue.<sup>4</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 6, 2012 appellant, then a 41-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on December 4, 2012 she injured both knees, her right hand and wrist, her left arm and shoulder, and her neck when she fell down concrete steps while in the performance of duty. She stopped work on December 6, 2012. On December 26, 2012 OWCP accepted the claim for sprain of the right knee, sprain of the bilateral shoulders, and bilateral wrist sprain. It authorized wage-loss compensation beginning January 22, 2013. On April 1, 2013 OWCP expanded the acceptance of the claim to include right anterior cruciate ligament tear and tear of the posterior horn of the right medial meniscus. On June 13, 2013 it further expanded the acceptance of the claim to include bilateral trigger finger, bilateral radial styloid tenosynovitis, and bucket tear of the left medial meniscus.<sup>5</sup>

On May 30, 2018 appellant requested that OWCP authorize a total knee replacement. On September 14, 2018 she underwent a right knee magnetic resonance imaging (MRI) scan, which demonstrated a posterior horn medial meniscus complex tear including a radial defect of the root ligament attachment and peripheral meniscus extrusion identified as a chronic tear with post-surgical change superimposed on acute tearing, anterior cruciate ligament ganglion cystic changes and scarring, scarring within the infrapatellar fat body, retropatellar grade 3 chondromalacia, and mild joint effusion.

In an October 10, 2018 report, appellant's attending physician, Dr. Daniel Hamman, a Board-certified orthopedic surgeon, examined her due to sharp, aching, throbbing, right knee pain with numbness and tingling down the lateral calf and into the lateral toes. On physical examination he found well-healed incisions from her prior arthroscopy, full strength, mild pseudo-laxity to valgus testing, and pain along the medial joint line and shift with mild patellofemoral crepitus. Dr. Hamman reviewed appellant's October 10, 2018 x-rays, which demonstrated joint space narrowing of the medial compartment with osteophytosis, mild-to-moderate patellofemoral

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> Docket No. 19-1495 (issued March 3, 2020).

<sup>5</sup> On April 18, 2015 the employing establishment separated appellant from employment. On July 2, 2015 appellant received a third-party settlement.

arthritis, and osteophytosis posteriorly, grade 2-3. He diagnosed primary osteoarthritis of the right knee.

On February 21, 2019 Dr. Hamman requested authorization for a right total knee arthroplasty. In a February 25, 2019 report, he noted appellant's history of injury and history of right knee medical treatment. Dr. Hamman determined that appellant's right knee arthritis had progressed to the point that, in his opinion, another arthroscopy would not be very effective in relieving her pain. He noted that appellant was considering right total knee arthroplasty.

In a February 27, 2019 development letter, OWCP requested additional medical evidence and testing supporting appellant's requested right total knee arthroplasty. It further noted that her claim was referred to a district medical adviser (DMA) for review. OWCP afforded appellant 30 days for response.

In a March 4, 2019 report, Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as a DMA, reviewed appellant's medical record and noted that right knee arthritis was not an accepted condition. He opined that the requested surgery was not medically necessary. The DMA found mild-to-moderate arthritis with preservation of joint space. He further noted that, as appellant was under 50 and on chronic opioids, pain relief was unpredictable such that the request was not medically necessary.

On March 8, 2019 OWCP advised appellant of the disagreement between Dr. Hamman and the DMA regarding the necessity of her requested right total knee replacement. It afforded her 30 days to submit additional supporting medical evidence. OWCP noted that, if appellant did not provide additional medical evidence within the allotted period, a decision would be made based on the evidence of record.

Appellant resubmitted Dr. Hamman's February 25, 2019 report. She also provided a March 11, 2019 report from Dr. Gregory Reichhardt, a Board-certified physiatrist, diagnosing right knee pain following an arthroscopy and reviewing her January 29, 2018 right knee MRI scan.

On May 7, 2019 appellant underwent right knee total arthroplasty. Dr. Hamman reported grade 4 changes of the medial femoral condyle and grade 3 to 4 changes of the patella.

By decision dated November 19, 2019, OWCP denied authorization for the right total knee arthroplasty. It found that appellant had not submitted evidence establishing that this procedure was medically necessary. On November 27, 2019 appellant, through counsel, requested a telephone hearing before a representative of OWCP's Branch of Hearings and Review.

On November 25, 2019 OWCP referred appellant, a statement of accepted facts (SOAF), and a series of questions to Dr. John Douthit, a Board-certified orthopedic surgeon, for a second opinion evaluation to assess her work-related condition.

In a December 16, 2019 report, Dr. Douthit described appellant's history of injury and noted that she had undergone a left total knee replacement. He reviewed her medical records and performed a physical examination. Dr. Douthit found good range of motion in both knees, good stability of the total knee replacement with some slight anterior posterior laxity, and no joint effusions. He also noted that appellant had a right total knee replacement, but found that a total

knee replacement as she has had on her left knee would not be indicated. Dr. Douthit opined that all of appellant's conditions appear to be related to the fall she sustained at work in 2012. He further noted that her conditions and injuries may have been aggravated by excessive weight and with preexisting degenerative disease of the knees. Dr. Douthit noted that appellant felt that all her conditions were precipitated and accelerated by her work-related fall. He listed the residuals of her accepted employment injury and reported that appellant had chronic bilateral knee problems on the left, a total knee replacement, and on the right, aggravated osteoarthritis. Dr. Douthit noted that appellant had excessive weight with a gastroplasty and had lost 100 pounds of weight, which would have had a bearing on the deterioration of her knees. He opined that appellant had no indications for further surgery on her knees.

On February 4, 2020 an OWCP hearing representative conducted a preliminary review and found that the case was not in posture for decision as Dr. Douthit indicated that appellant experienced a work-related aggravation of her preexisting right knee osteoarthritis. The hearing representative set aside OWCP's November 19, 2019 decision and remanded the case for clarification through a supplemental report from Dr. Douthit regarding appellant's accepted right knee conditions and whether the right total knee replacement was medically necessary.

On February 12, 2020 OWCP requested a supplemental report from Dr. Douthit addressing whether appellant's May 7, 2019 right knee surgery was medically necessary due to accepted employment injuries.

In a February 12, 2020 supplemental report, Dr. Douthit noted that appellant reported falling on both knees, and that both knees had deteriorated over time and required surgery. He further noted that it was accepted that the fall "contributed" to the arthritis in her knees although it was more probable that she had arthritis from her excessive weight. He reviewed the May 7, 2019 operative report and found that Grade 4 loss of articular cartilage of the medial femoral condyle and grade 3-4 loss of the patella would justify a total knee replacement of the right knee.

By decision dated March 17, 2020, OWCP again denied authorization of the total right knee arthroplasty, finding that the evidence of record did not support that it was medically necessary to address the effects of the employment-related injury.

On March 24, 2020 appellant, through counsel, requested a telephone hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on July 17, 2020.

By decision dated October 1, 2020, OWCP's hearing representative affirmed the March 17, 2020 OWCP decision.

### **LEGAL PRECEDENT**

Section 8103(a) of FECA<sup>6</sup> provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed by or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce

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<sup>6</sup> *Supra* note 3.

the degree or the period of disability, or aid in lessening the amount of the monthly compensation.<sup>7</sup> In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in determining whether a particular type of treatment is likely to cure or give relief.<sup>8</sup> The only limitation on OWCP's authority is that of reasonableness.<sup>9</sup>

While OWCP is obligated to pay for treatment of employment-related conditions, appellant has the burden of proof to establish that the expenditures are for treatment of the effects of an employment-related injury or condition.<sup>10</sup> Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.<sup>11</sup> In order for a surgical procedure to be authorized, appellant must establish that the procedure is for a condition causally related to the employment injury and that the procedure was medically warranted.<sup>12</sup> Both of these criteria must be met in order for OWCP to authorize payment.<sup>13</sup>

Abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>14</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant underwent total right knee replacement on May 7, 2019.

OWCP referred appellant for a second opinion examination with Dr. Douthit. In his December 16, 2019 report, Dr. Douthit opined that all of appellant's conditions appear to be related to the fall she sustained at work in 2012. He further noted that her conditions and injuries may have been aggravated by excessive weight and with preexisting degenerative disease of the

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<sup>7</sup> 5 U.S.C. § 8103(a); *Thomas W. Stevens*, 50 ECAB 288 (1999).

<sup>8</sup> *J.K.*, Docket No. 20-1313 (issued May 17, 2012); *R.C.*, Docket No. 18-0612 (issued October 19, 2018); *W.T.*, Docket No. 08-0812 (issued April 3, 2009).

<sup>9</sup> *D.C.*, Docket No. 18-0080 (issued May 22, 2018); *Mira R. Adams*, 48 ECAB 504 (1997).

<sup>10</sup> *R.M.*, Docket No. 19-1319 (issued December 10, 2019); *J.T.*, Docket No. 18-0503 (issued October 16, 2018); *Debra S. King*, 44 ECAB 203, 209 (1992).

<sup>11</sup> *K.W.*, Docket No. 18-1523 (issued May 22, 2019); *C.L.*, Docket No. 17-0230 (issued April 24, 2018); *M.B.*, 58 ECAB 588 (2007); *Bertha L. Arnold*, 38 ECAB 282 (1986).

<sup>12</sup> *T.A.*, Docket No. 19-1030 (issued November 22, 2019); *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

<sup>13</sup> *J.L.*, Docket No. 18-0990 (issued March 5, 2019); *R.C.*, 58 ECAB 238 (2006); *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

<sup>14</sup> *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *E.L.*, Docket No. 17-1445 (issued December 18, 2018); *L.W.*, 59 ECAB 471 (2008); *P.P.*, 58 ECAB 673 (2007); *Daniel J. Perea*, 42 ECAB 214 (1990).

knees. Dr. Douthit noted that appellant had excessive weight with a gastroplasty and had lost 100 pounds of weight, which would have had a bearing on the deterioration of her knees.

In his February 12, 2020 supplemental report, Dr. Douthit noted that appellant reported falling on both knees, and that both knees deteriorated over time requiring surgery. He further noted that it was accepted that the fall “contributed” to the arthritis in her knees although it was more probable that she had arthritis from her excessive weight. Dr. Douthit reviewed the May 7, 2019 operative report and found that Grade 4 loss of articular cartilage of the medial femoral condyle and Grade 3-4 loss of the patella would justify a total knee replacement of the right knee. However, while Dr. Douthit supported medical necessity of the total right knee arthroplasty, he did not explain whether appellant’s accepted employment injury caused or contributed to the need for that surgical procedure.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.<sup>15</sup> While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>16</sup> Once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.<sup>17</sup>

As Dr. Douthit has not explained whether the requested surgery was causally related to the accepted employment injury, further development is required. The case must, therefore, be remanded to OWCP for clarification. On remand OWCP shall request clarification from Dr. Douthit on whether appellant’s total right knee replacement was causally related to the accepted injury. If Dr. Douthit is unavailable or unwilling to provide another supplemental opinion, OWCP shall refer appellant, a SOAF, and list of questions to a new second opinion physician in the appropriate field of medicine for a rationalized medical opinion on whether appellant’s total right knee replacement surgery was medically necessary due to appellant’s accepted December 4, 2012 employment injury. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

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<sup>15</sup> *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

<sup>16</sup> *M.T., id., S.S.*, Docket No. 18-0397 (issued January 15, 2019); *see also Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

<sup>17</sup> *M.T., id.; T.K.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 1, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 11, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board